



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
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NYS Department of Health*

Dennis P. Whalen  
*Executive Deputy Commissioner  
NYS Department of Health*

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

PUBLIC

Michael A. Gonzalez, R.P.A.  
*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

June 28, 2004

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Matthew Guy, M.D.  
211 Beach 144th Street  
Neponsit, NY 11694-1114

Re: License No. 108805

Dear Dr. Guy:

Enclosed please find Order #BPMC 04-145 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 5, 2004.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Ronald G. Russo, Esq.  
Herzfeld & Rubin PC  
40 Wall Street  
New York, NY 10005

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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**IN THE MATTER**  
**OF**  
**MATTHEW GUY, M.D.**

**CONSENT**  
**ORDER**

BPMC No. 04-145

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Upon the application of (Respondent) MATTHEW GUY, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is


ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 6/25/04

  
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MICHAEL A. GONZALEZ, R.P.A.  
Vice Chair  
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER  
OF  
MATTHEW GUY, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

MATTHEW GUY, M.D., representing that all of the following statements are true, deposes and says:

That on or about July 1, 1971, I was licensed to practice as a physician in the State of New York, and issued License No. 108805 by the New York State Education Department.

My current address is 211 Beach 144<sup>th</sup> Street, Neponsit, New York 11694-1114, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with eighteen (18) specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I agree not to contest the allegations set forth in the Eighth Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of twelve (12) months, with the first two (2) months to be served as a period of actual suspension and with the last ten (10) months of said suspension to be stayed.

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of three (3) years beginning at the conclusion of the two month period of actual suspension, subject to the terms set forth in attached Exhibit "B."

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive

my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED 6/16/2004

  
\_\_\_\_\_  
MATTHEW GUY, M.D.  
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: June 12, 2004   
RONALD G. RUSSO, ESQ.  
Attorney for Respondent

DATE: 6/21/04   
DAVID W. SMITH  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 6/23/04   
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

**EXHIBIT "A"**

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
MATTHEW GUY, M.D.

STATEMENT  
OF  
CHARGES

MATTHEW GUY, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1971, by the issuance of license number 108805 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Patient A, 72 year old female, was first treated by Respondent at his office at 211 Beach 144<sup>th</sup> Street, Neponsit, New York. ("Office") on or about October 16, 2000 for possible colon Cancer
1. During October, November and December, 2000, Respondent performed approximately eight (8) rectal examinations and recorded positive guaiacs each time. Respondent failed to properly evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
  2. Respondent failed to obtain Patient A's consent for any of the partial colonoscopies or endoscopic procedures he performed or note such consent, if any.
  3. Six (6) of the rectal examinations were unnecessary.



**B. Respondent treated Patient B at his Office from December, 1998 through January, 2002 for epigastric pain and other conditions.**

- 1. In or about September, 1999, Respondent found positive guiac as the result of a rectal examination. Thereafter, between October, 1999 and January, 2002, Respondent performed approximately eleven (11) more rectal examinations and recorded positive guaiacs each time. Respondent failed to properly evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.**
- 2. Four (4) of the rectal examinations were unnecessary.**
- 3. During this entire period, Respondent inappropriately administered to Patient B injections of Vitamin B-12.**
- 4. In January, 2002, Respondent performed an unnecessary endoscopy on Patient B.**
- 5. Respondent failed to obtain a consent from Patient B for any of the partial colonoscopies or endoscopic procedures he performed or note such consent, if any.**

**C. Respondent treated Patient C, a 71 year-old man, at his Office for rectal bleeding between in or about October, 1999 and in or about January, 2002.**

1. Between November, 1999 and May, 2001, Respondent performed approximately twenty-one (21) rectal examinations and recorded positive guaiacs approximately nineteen (19) times. Respondent failed to properly evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
2. During this period of time Respondent inappropriately administered injections of Vitamin B-12 to Patient C.
3. Respondent failed to obtain consent from Patient C for the partial colonoscopies or endoscopic procedures he performed or note such consent, if any.

D. Patient D, an 87 year old woman, was treated by Respondent at his Office for stomach problems and other medical conditions between June, 1997 and September, 2002.

1. During this period of time, Respondent performed approximately twenty-five (25) to thirty (30) rectal examinations recording positive guaiacs almost every time. Respondent failed to properly evaluate, follow-up or treat such condition or note such evaluation follow-up or treatment, if any.
2. During this period of time, Respondent inappropriately administered to Patient D injections of Vitamin B-12.

3. During this period of time, Respondent performed four (4) endoscopies on Patient D, two of which were excessive.
4. Respondent failed to obtain a consent from Patient D for the partial colonoscopies or endoscopic procedures performed by him or note such consent, if any.

**E. Patient E was treated by Respondent at his Office between May, 1999 and October, 2002 for colonic dysfunction and other medical conditions.**

1. During this period of time, Respondent performed approximately twenty-nine (29) rectal examinations and recorded positive guaiacs almost every time. Respondent failed to properly evaluate, follow-up or treat such condition or note such evaluation, follow-up or treatment, if any.
2. During this period of time, Respondent inappropriately administered to Patient E injections of Vitamin B-12.
3. Respondent failed to obtain consent from Patient E for the partial colonoscopies and endoscopic procedures he performed during this time or note such consent, if any.

**F. Respondent treated Patient F at his Office for rectal problems and other medical conditions from in or about August, 2000 through November, 2000.**

- 1. During this period, Respondent performed rectal examinations and recorded positive guaiacs approximately three (3) times.  
Respondent failed to properly evaluate, follow-up or treat such conditions or note such evaluations, follow-up or treatment, if any.**
  
- 2. Respondent failed to obtain consent for any of the partial colonoscopies and endoscopic procedures he performed or note such consent, if any.**

**SPECIFICATION OF CHARGES**  
**FIRST THROUGH SIXTH SPECIFICATIONS**  
**PRACTICING WITH GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraphs A and A1-3.
2. Paragraphs B and B1-5.
3. Paragraphs C and C1-3.
4. Paragraphs D and D1-4
5. Paragraphs E and E1-3.
6. Paragraphs F and F1-2.

**SEVENTH SPECIFICATION**  
**GROSS INCOMPETENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

7. Paragraphs A and A1-3; B and B1-5; C and C1-3; D and D1-4; E and E1-3; and/or F and F1-2.

### **EIGHTH SPECIFICATION**

#### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

8. Paragraphs A and A1-3; B and B1- 5; C and C1-3; D and D1-4; E and E1-3; and/or F and F1-2.

### **NINTH SPECIFICATION**

#### **INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

9. Paragraphs A and A1-3; B and B1- 5; C and C1-3; D and D1-4; E and E1-3; and/or F and F1-2.

**TENTH THROUGH TWELFTH SPECIFICATIONS**

**EXCESSIVE TESTING**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by ordering of excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

10. Paragraphs A and A3.
11. Paragraphs B and B4.
12. Paragraphs D and D3.

**THIRTEENTH THROUGH EIGHTEENTH SPECIFICATIONS**

**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

13. Paragraphs A and A1-2.
14. Paragraphs B and B1, 5.
15. Paragraphs C and C1, 3.
16. Paragraphs D and D1, 4.
17. Paragraphs E and E1, 3.
18. Paragraphs F and F1-2.

DATED: May 6, 2004  
New York, New York



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**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct



## EXHIBIT "B"

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

## PRACTICE MONITOR

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
10. Within the first year of the Probation, Respondent shall enroll in and complete a continuing medical education course in gastroenterology proposed by Respondent and approved in advance by the Director of OPMC.
11. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.